



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0755]**

**RIN 1625-AA00**

**Safety Zone; Les Cheneaux Islands, Cedarville, MI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing temporary safety zones for navigable waters within 50 yards of certain swim routes of a marine event in the Les Cheneaux Islands, in Cedarville, MI. The safety zones are needed to protect event participants from risks associated with the boating public near highly trafficked areas of the waterway. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sault Sainte Marie or his representative.

**DATES:** This rule is effective from 7:00 a.m. to 3:00 p.m. on September 8, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0755 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Sean Murphy, Waterways Management, Sector Sault Sainte Marie U.S. Coast Guard; telephone 906-635-3223, email [Sean.V.Murphy@uscg.mil](mailto:Sean.V.Murphy@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details of the specific marine event and safety zone distance were not finalized within a sufficient time to allow for notice and a subsequent comment period before the commencement of the planned marine event. Delaying this rule to allow for a notice and comment period would be impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect the swimmers participating in this swim event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because prompt action is needed to protect the swimmers participating in this event on September 8, 2019.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards associated with swimmers swimming between the Les Cheneaux Islands in a swim event will be a safety concern for anyone within 50 yards of certain swim routes through highly trafficked areas of the Les Cheneaux Islands. This rule is needed to protect event participants and support vessels during the event.

#### **IV. Discussion of the Rule**

This rule establishes safety zones from 7:00 a.m. until 3:00 p.m. on September 8, 2019. The duration of the zone is intended to protect event participants, support vessels, and the general boating public in these navigable waters during the marine event. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the

requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and location of the safety zones. Vessel traffic may request permission to transit the zone from the designated representative of the Captain of the Port, who may allow the vessel cross the Safety Zone when there is no risk to the event participants. The field of swimmers will not spread across the entirety of the waterway; thus, there will be opportunity for a designated representative of the Captain of the Port to allow vessels to transit the zones. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones that will prohibit entry within 50 yards of certain swim courses between the Les Cheneaux Islands. It is categorically excluded from further review under paragraph L[60(a)] in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0755 to read as follows:

#### **§ 165.T09-0755 Safety Zones; Les Cheneaux Islands, Cedarville, MI.**

(a) Location. The following area is a safety zone: All navigable waters within 50 yards of a line drawn between the following coordinates, based on NAD 83:

(1) 45° 58.481'N, 084° 17.546W to 45°58.535N, 084° 18.102W.

(2) 45° 58.158N, 084° 18.319W to 45° 58.157N, 084° 18.595W.

(3) 45° 59.468N, 084° 19.826W to 45° 58.973N, 084° 19.807W.

(4) 45° 58.445N, 084° 21.792W to 45° 58.301N, 084° 22.003W.

(5) 45° 58.535N, 084° 22.480W to 45° 58.732N, 084° 22.591W to 45° 59.001N,  
084° 22.914W to 45° 59.044N, 084° 22.792W.

(b) Definitions. As used in this section, designated representative means a Coast Guard

Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zones.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, hail the COTP's representative on an appropriate VHF channel. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This section will be enforced from 7:00 a.m. to 3:00 p.m. on September 8, 2019.

Dated: August 30, 2019.

P.S. Nelson,

CAPT, U.S. Coast Guard,

Captain of the Port Sault Sainte Marie.

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